

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NORTH CAROLINA  
WESTERN DIVISION  
NO. 5:10-CR-284-BR-1

UNITED STATES OF AMERICA	)	
	)	
v.	)	ORDER
	)	
	)	
TERRELL LEE JONES,	)	
Defendant	)	

This matter is before the court on defendant's motion to dismiss the indictment against him pursuant to 12(b)(2) of the Federal Rules of Criminal Procedure, to which the government filed a response in opposition.

Defendant moves to dismiss the indictment on the ground that his 2007 North Carolina conviction for attempted larceny does not qualify as "a prior conviction 'punishable by imprisonment for a term exceeding one year,' as required for conviction under 18 U.S.C. § 922(g)(1)." (Mot. at 1). Defendant contends that under North Carolina's sentencing scheme, "no person convicted of a Class I offense with a prior record level I could receive more than ten months imprisonment." (Mot. at 4). In support of his argument, defendant relies on two recent Supreme Court decisions in United States v. Rodriguez, 553 U.S. 377 (2008), and Carachuri-Rosendo v. Holder, 130 S. Ct. 2577 (2010). Defendant contends that Carachuri effectively overruled United States v. Harp, 406 F.3d 242 (4th Cir. 2005). The Fourth Circuit Court of Appeals recently rejected this argument, see United States v. Simmons, No. 08-4475 (Feb. 16, 2011), and the court is bound to apply its decision and that in Harp to this case.

The motion to dismiss is DENIED.

This 17 February 2011.

A handwritten signature in green ink, appearing to read "W. Earl Britt", is positioned above a horizontal line.

W. Earl Britt  
Senior U.S. District Judge